IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.348 OF 1999

Govind Maruti Gurav ...Petitioner

vs.

Zilla Parishad, Thane & Another...Respondents.

Mr.D.K.Ghaisas, for Petitioner.

Mr.V.P.Malvankar, Addl.G.P. for Respondent no.2.

CORAM: A.P.SHAH & S.U.KAMDAR, JJ.

DATED: 20th September,2004

ORAL JUDGEMENT (PER S.U.KAMDAR,J.)

1. By the present petition, the Petitioner is seeking relief that his retiremental dues should be released by the Respondents.

2. Some of the material facts are as under:-

. The petitioner was working as a Cinema Operator/Junior Mechanic since 23.12.1965 with the first respondent. On 30.6.1973, the petitioner's services were terminated by the Block Development

officer, Thane. According to the petitioner,the said

block development officer, is not a competent appointing authority and consequently was not entitled to take any disciplinary action of termination of services of the petitioner.

3. On 29.4.1982, the petitioner filed a Civil Suit being No.181 of 1976 which came to be dismissed. On 16.3.1990 the appeal preferred by the petitioner in District Court, Thane was allowed by Additional District Judge, Thane, and he inter alia held that termination order passed against the petitioner was bad in law and he should be deemed to be in service since 30.6.1973 and ordered that the petitioner should be permitted to join the duties with full back wages. On 25.7.1997, an order came to be passed by this Hon'ble Court in second appeal being no.242 of 1990, confirming the findings of lower appellate court. This court however, restricted the claim of the petitioner for back wages of amount of Rs.2,00,000/-(Rupees two lakhs only) with interest at the rate of 9% per annum. Since the petitioner has already reached the date of superannuation, the question of his reinstatement in the service did not arise. On 27.11.1997 the first respondent paid the

back wages as directed by this Court.

4. It is the grievance of the petitioner that though back wages are paid, the petitioner has been denied the retirement benefits such as pension, gratuity etc. Accordingly, on 16.1.1998, the petitioner called upon first respondent through Advocate to pay all pensionary benefits to the petitioner herein. On 3.6.1998, the Respondent no.1 contended that the petitioner is entitled to only a payment of Rs.2,00,000/- (Rupees two lakhs only) in full and final settlement of his claim and the petitioner is not entitled to any pensionary benefits. The matter was thereafter, placed for speaking to the minutes at the instance of the petitioner herein and by order dated 13.8.1998 the Court clarified that the respondent no.1 should inform the petitioner in writing as to on what grounds retiral benefits were refused to the petitioner. The court further directed that the petitioner will be at liberty to challenge the said grounds of refusal of retiral benefits to the petitioner. On 3.12.1998, the Respondent no.1 informed the petitioner that the petitioner is not entitled to pensionary benefits because he was

holding the post of Cinema Operator which was under the Development Scheme as a temporary post. It is further informed to him that since the

scheme was closed by the State Government in the year 1973, the post held by the Petitioner was abolished and consequently the petitioner services were terminated with effect from 30.7.1973. The petitioner was further informed that under the provisions of Rule 45 of M.C.S.R., the Petitioner is not entitled to pensionary benefits. This order dated 3.12.1998 is challenged by the petitioner in the present petition.

5. We have perused the record. From the order passed by this Court in Second Appeal no.912/80. We find that the reasons given that the petitioner's services are ultimately terminated because the petitioner was holding temporary post and the same is abolished has not found favour with this Hon'ble Court. Secondly, we are also of the opinion that once the termination of the petitioner is declared as illegal, the petitioner becomes entitled to all consequential benefits. The petitioner's right to the back wages is restricted to sum of Rs.2,00,000/- (Rupees two lakhs only) as per the

order of this court, but the petitioner's claim, in so far as payment of retiral benefits is concerned is neither concluded nor rejected by this Court.

6. In view of the aforesaid circumstances, we find that the action on the part of Respondent no.1 of refusal to pay retiral benefits to the petitioner, is totally illegal and unlawful. We accordingly, set aside the said order dated 3.12.1998 and direct Respondent no.1 to make payment to the Petitioner of the retiral benefits including pension amount in accordance with the provisions of law particularly Maharashtra Civil Services Rules. The respondents are further directed to make payment of aforesaid retiral benefits with simple interest at the rate of 6% per annum. We also direct the respondent no.1 to make aforesaid payment within the period of three months from today. We dispose of the Petition accordingly. However, there shall be no order as to costs.

(A.P.Shah, J.)

20.9.2004. (S.U.Kamdar, J)